IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.MC.No. 3064 of 2007()

CC.1175/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA

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PETITIONER: ACCUSED

DR.R.RAGHAVAN, S/O.RAMANKUTTY, ABHAYAM VEEDU, THOTTEKKATTUKARA, ALUVA WEST VILLAGE.

BY ADV. DR.VINCENT PANIKULANGARA

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM REPRESENTING THE S.I. OF POLICE, ALUVA IN CR.654/01 OF ALUVA TRAFFIC P.S.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3064 of 2007

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Dated this the 5th day of October, 2007

O R D E R

The petitioner, a doctor, faces allegations for offences punishable, inter alia, under Sections 279 and 338 I.P.C. The petitioner had appeared before the learned Magistrate and was enlarged on bail. On the ground that the petitioner was not present, on 3.8.2006 the learned Magistrate had issued a non-bailable warrant against the petitioner. According to the petitioner, the case was not posted to 3.8.06 and the A diary maintained by the court did not show that the case was posted on that date. He appeared before the court later, it is submitted. The case was adjourned. The petitioner did not later appear before court. He now finds a warrant of arrest issued by the learned Magistrate chasing him.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence was not wilful, but was due to reasons beyond his control. The petitioner is willing to appear before the learned Magistrate and co-operate with the court for expeditious disposal of the case. But he apprehends that his application for bail may not be considered by the learned Magistrate

on merits, in accordance with law and expeditiously. He therefore prays that directions under Section 438 and/or 482 Cr.P.C. may be issued in favour of the petitioner.

3. The learned Prosecutor only submits that the petitioner may be directed to appear before the Investigator or the learned Magistrate and then seek regular bail in the normal course.

4. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (AIR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

5. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before

the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

7. Hand over the order.

(R. BASANT)
Judge

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